

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Nicole Yzaguirre,

Civil No. 10-CV-3793 DWF/JJK

Plaintiff,

vs.

Eric Norling, in his individual  
Capacity,

Defendant.

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**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF HIS  
MOTION IN LIMINE TO EXCLUDE UNDISCLOSED WITNESSES**

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Defendant respectfully requests this Court issue an Order excluding Attorney Jill Clark, Terry Yzaguirre, Margaret Yzaguirre, Kate Smith, Natasha Miller and Markita Seahorn from testifying as fact witnesses because they were never disclosed as witnesses in Plaintiff’s Rule 26(a)(1) Initial Disclosures. *Affidavit of Jason M. Hiveley, Exhibit A.* Additionally, Attorney Clark was not disclosed as a witness in Plaintiff’s Witness List filed during the late evening hours of December 27, 2011. *Aff. Hiveley, Exhibit B.* On December 28, 2011, for the first time since initiating this case, Plaintiff formally identified Attorney Jill Clark as a fact witness and stated only that she will testify regarding “Conversations with Det. Norling on 8/31/10.” *Aff. Hiveley, Exhibit C.* In addition to failing to disclose the above witnesses, Plaintiff failed to provide contact information for any of the witnesses and, in fact, with regard to one of the above

witnesses, Attorney Clark refused to acknowledge the witness was a material witness and specifically objected to providing the witness's contact information during Plaintiff's deposition. *Aff. Hiveley, Exhibit D (Confidential portion of Plaintiff's Deposition transcript, filed conventionally under seal, see 29:21-36:25).*

The Federal Rules of Civil Procedure require parties to disclose all persons with relevant information. Fed. R. Civ. P. 26(a)(1). Parties are also required to supplement any disclosures or discovery responses with relevant information. Fed. R. Civ. P. 26(e). Plaintiff failed to comply with any of these requirements.

For the foregoing reasons, the court should exclude testimony from Attorney Jill Clark, Terry Yzaguirre, Margaret Yzaguirre, Kate Smith, Natasha Miller and Markita Seahorn.

IVERSON REUVERS

Dated: December 28, 2011

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